

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD M. ST. PIERRE and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Austin, TX

*Docket No. 02-1362; Submitted on the Record;
Issued December 12, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury to his right elbow in the performance of duty.

On July 24, 2001 appellant, then a 49-year-old program and management analyst, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that on July 23, 2001 he realized that his right elbow pain was causally related to his federal employment. On the reverse of the form, appellant's supervisor indicated that appellant did not stop working.

Evidence accompanying the claim consisted of appellant's narrative report, and a Texas workers' compensation work status report form, dated July 23, 2001, and signed by Dr. J.B. Lichtenhan, a Board-certified family practitioner, who diagnosed appellant's condition as right lateral epicondylitis, due to repetitive use. He recommended that appellant take a five-minute break every hour for stretching and released appellant to full-duty work immediately.

In a letter dated August 17, 2001, the Office of Workers' Compensation Programs advised appellant that the information submitted in his claim was not sufficient to determine whether he was eligible for benefits under the Federal Employees' Compensation Act.¹ The Office advised appellant of the additional medical and factual evidence needed to support his claim. In particular, appellant was directed to provide a comprehensive medical report from his treating physician.

In response to the Office's letter, appellant submitted a second narrative report, addressing the questions the Office posed in its letter. Also submitted was a copy of appellant's position description and the employing establishment's letter to the Office, regarding appellant's work duties. Finally, appellant submitted physical therapy reports, dated August 10 and 13, 2001, and an exercise flow sheet from the Central Texas Occupational Rehabilitation Center.

¹ 5 U.S.C. §§ 8101-8103.

By decision dated September 28, 2001, the Office denied appellant's claim. The Office found that the medical evidence was not sufficient to establish that appellant's right elbow condition was caused by employment factors.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty as alleged.

An employee seeking benefits under the Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁴ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁵ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed⁶ or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

⁵ *See John A. Snowberger*, 34 ECAB 1262, 1271 (1983); *Walter D. Morehead*, 31 ECAB 188, 194 (1979); *Rocco Izzo*, 5 ECAB 161, 164 (1952).

⁶ *See Georgia R. Cameron*, 4 ECAB 311, 312 (1951); *Arthur C. Hamer*, 1 ECAB 62, 64 (1947).

⁷ *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁸ *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

⁹ *See James Mack*, 43 ECAB 321 (1991).

In the instant case, it is not disputed that appellant is an employee, or that he suffered an injury to his right elbow. However, there is insufficient evidence to establish that the injury is due to factors of his employment. The July 23, 2001 report from Dr. Lichtenhan diagnosed appellant's condition as right lateral epicondylitis, due to repetitive use, but the report is not sufficient because his opinion did not give a complete history listing the specific job factors that caused the condition. The only additional evidence submitted prior to the Office's September 28, 2001 decision¹⁰ consists of physical therapy reports.¹¹

As noted above, part of appellant's burden of proof includes the submission of medical evidence establishing that the claimed condition is causally related to employment factors. As appellant has not submitted such evidence, he has not met his burden of proof in establishing his claim.

The decision of the Office of Workers' Compensation Programs dated September 28, 2001 is affirmed.

Dated, Washington, DC
December 12, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member

¹⁰ Appellant submitted several medical reports after the Office's September 28, 2001 decision. The Board's jurisdiction is limited to evidence which was before the Office at the time it rendered the final decision. Inasmuch as the Office did not consider this evidence, it cannot be considered on review by the Board. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting such evidence to the Office as part of a reconsideration request.

¹¹ A physical therapist is not considered to be a physician under the provisions of the Act, and is not competent to render a medical opinion; therefore, the physical therapy reports dated August 10 and August 13, 2001 are of no probative value; *see* 20 C.F.R. § 8101(2); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).